



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

SEP 29 1998

SEP 30 1998

RESP

Ms. Susan M. Hantak
Registered Agent
Willert Home Products, Inc.
4044 Park Avenue
St. Louis, Missouri 63110

Re: In the Matter of Willert Home Products
Docket No. VII-98-H-0017

In the Matter of Willert Home Products
Docket No. VII-97E-377

Dear Ms. Hantak:

Please find enclosed two Complaints and Notice of Opportunity for Hearing filed by the Environmental Protection Agency (EPA), Region VII, against Willert Home Products. The first Complaint, Docket No. VII-98-H-0017, alleges violations of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. The second Complaint, Docket No. VII-97E-377, alleges violations of the Emergency Planning and the Community Right-to-Know Act, 42 U.S.C. § 11001 et seq. Both Complaints require an answer within thirty (30) days.

Should you have any questions about these matters, please call me at (913) 551-7580.

Sincerely,

Phillip S. Page
Assistant Regional Counsel

Enclosures

c: Brian Mitchell, ARTD/IRSP
Steve Wurtz, ARTD/TSPP

R00166532
RCRA RECORDS CENTER



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

SEP 29 1998

SEP 30 1998

RESP

Ms. Kathy Flippin
Missouri Department
of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102

Re: In the Matter of Willert Home Products
Docket No. VII-98-H-0017

Dear Ms. Flippin:

Please find enclosed a copy of a Complaint, Compliance Order and Notice of Opportunity for Hearing which was filed with the Regional Hearing Clerk, EPA Region VII against Willert Home Products, 4044 Park Avenue, St. Louis, Missouri 63110. The Complaint alleges violations of RCRA's hazardous waste determination provisions and the permit and interim status requirements for a storage facility. The Complaint seeks a total penalty of \$86,511.00.

Additionally, EPA is also filing an EPCRA Complaint (Docket No. VII-97E-377) against Willert for failure to immediately notify the appropriate authorities of a release of a reportable quantity of 1,4-dichlorobenzene in October, 1997. The penalty sought in that case is \$50,000.00.

Should you have any questions, please do not hesitate to call me at (913) 551-7580.

Sincerely,

Phillip S. Page

Phillip S. Page
Assistant Regional Counsel

Enclosure

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

RCRA and Toxic Division of EPA, Region VII, by EPA Delegation No. R7-8-9-A, dated January 1, 1995. The Respondent is Willert Home Products, located at 4044 Park Avenue, Saint Louis, Missouri.

2. The State of Missouri has been granted final authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and has adopted by reference the federal regulations cited herein at Title 10, Code of State Regulations, Chapter 25 (10 C.S.R. 25). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes the EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When the EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Missouri has been notified of this action in accordance with Section 3008 of RCRA, 42 U.S.C. § 6928.

3. Complainant has determined that Respondent has violated Section 3005 of RCRA, 42 U.S.C. § 6925, 40 C.F.R. 270, 40 C.F.R. 262.34(a) and (b)/10 C.S.R. 25-5.262(2)(C)(1) and (2); 40 C.F.R. 262.34(a)(2) and (3)/10 C.S.R. 25-5.262(2)(C)(1); and 40 C.F.R. 262.11/10 C.S.R. 25-5.262(1). Based upon the facts alleged in this

Complaint and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), as discussed in the RCRA Civil Penalty Policy issued by EPA on October 26, 1990, including the seriousness of the violations, the threat of harm to public health or the environment, any good faith efforts of Respondent to comply with the applicable requirements, as well as other matters as justice may require, the Complainant proposes that Respondent be assessed a civil penalty of \$86,511.00 pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), for the violations of RCRA alleged in the Complaint. The proposed penalty may be adjusted if Respondent establishes bona fide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

B. COMPLAINT

ALLEGATIONS COMMON TO ALL COUNTS

4. Willert Home Products, is a Missouri corporation authorized to conduct business in the State of Missouri and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

5. Respondent operates a facility located at 4044 Park Avenue, Saint Louis, Missouri 63110 ("Facility"). Respondent manufactures products such as toilet bowl cleaners, potpourri, air fresheners, moth repellants, ash trays, etc. at the Facility. As a result of manufacturing operations, Respondent generates solid wastes and hazardous wastes.

6. On or about April 18, 1985, Respondent notified EPA that it was generating regulated quantities of hazardous waste at its Facility. On or about April 24,

1985, Respondent's Facility was assigned EPA Identification Number MOD006289680.

7. A representative of EPA inspected Respondent's Facility on October 28 and 29, 1997. During this inspection, the representative of EPA identified 50 55-gallon containers that were labeled "Charcoal w/Para Non-Hazardous Waste". None of the 50 55-gallon containers were dated with the accumulation start date. Additionally, none of the 55-gallon containers were labeled with the words, "Hazardous Waste".

Representatives of the Respondent stated that these drums consisted of spent charcoal that was removed from the two p-dichlorobenzene air strippers located at the Facility. A representative of Respondent indicated that the spent charcoal that was removed from the two- p-dichlorobenzene air strippers was generated in May, 1997.

COUNT I

FAILURE TO CONDUCT AN ADEQUATE HAZARDOUS WASTE DETERMINATION.

8. Complainant hereby incorporates the allegations contained in paragraphs 1 through 7 as if fully set forth herein.

9. In May 1997, a gas chromatograph test was conducted on the spent charcoal, a solid waste as defined by 40 C.F.R. 261.2, which was removed from the two p-dichlorobenzene air strippers. The analysis, dated May 30, 1997, showed the waste contained 35.7% p-dichlorobenzene. During the October, 1997 inspection, a representative of the Respondent indicated that a hazardous waste determination had not been conducted on the waste charcoal in accordance with the analytical procedures prescribed at 40 C.F.R. 262.11/10 C.S.R. 25-5.262(1). A Notice Of Violation was

issued to the Respondent at the conclusion of the October 28 and 29, 1997 inspection. The Notice Of Violation cited the Respondent for not conducting an adequate hazardous waste determination on the spent charcoal which was removed from the two p-dichlorobenzene air strippers.

10. Respondent failed to make an adequate hazardous waste determination in violation of the regulatory requirements found at 40 C.F.R. 262.11/10 C.S.R. 25-5.262(1).

11. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928, and based upon the allegations contained above, Complainant proposes that a civil penalty of \$20,466.00 (RCRA Civil Penalty Policy matrix value of \$ 550.00 for the gravity of the violation, \$16,500.00 for the multi-day portion of the violation, 20% increase in penalty for negligence, and an economic benefit of \$6.00) be assessed against Respondent for violating 40 C.F.R. 262.11/10 C.S.R. 25-5.262(1).

COUNT II

Failure to Comply with Requirements of RCRA Permit or RCRA Interim Status

12. Complainant hereby incorporates the allegations contained in paragraphs 1 through 7 as if fully set forth herein.

13. After the EPA inspection, Respondent conducted an adequate hazardous waste determination on the spent charcoal removed from the two p-dichlorobenzene air strippers and contained in the 50 55-gallon drums. The spent charcoal which was removed from the two p-dichlorobenzene air strippers and contained in the 50 55-gallon

drums was determined by Respondent to be a D027 (1,4-Dichlorobenzene) classified hazardous waste due to its p-dichlorobenzene content.

14. The regulations found at 40 C.F.R. 262.34(a)(2) and (3)/10 C.S.R. 25-5.262(2)(C)(1) require generators to label all containers of hazardous waste with the words "Hazardous Waste" and to date each container with the date of accumulation.

15. The Respondent failed to label the 50 55-gallon containers with the words, "Hazardous Waste" and failed to date the containers with the date of accumulation in violation of the requirements of 40 C.F.R. 262.34(a)(2) and (3)/10 C.S.R. 25-5.262(2)(C)(1).

16. The 50 55-gallon drums referred to in paragraph 7, containing the D027 spent charcoal hazardous waste removed from the two p-dichlorobenzene air strippers, were shipped from the Facility for proper disposal on May 28, 1998. Respondent indicated that a drum of the D027 spent charcoal hazardous waste which was removed from the two p-dichlorobenzene air strippers weighed approximately 250 pounds (113 kilograms). Thus in May, 1997, the Respondent generated approximately 12,500 pounds (approximately 5,682 kilograms) of D027 hazardous waste and subsequently shipped this waste off-site for disposal, on May 28, 1998.

17. The regulations found at 40 C.F.R. 262.34(a)/10 C.S.R. 25-5.262, state that generators of greater than 1000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for up to 90 days without a permit provided certain conditions are met. Additionally, the regulations found at 40 C.F.R. 262.34(b)/10 C.S.R. 25-5.262(2)(C)(2) state, inter alia, that if a generator of greater

than 1000 kilograms of hazardous waste in a calendar month stores hazardous waste for more than 90 days, that generator is an operator of a storage facility and is subject to the requirements of 40 C.F.R. Parts 264, and 265, and the permit requirements of 40 C.F.R. 270 and 260.395.7 RSMo.

18. Subsequent to November 18, 1980, the treatment, storage, or disposal of hazardous waste was prohibited unless an owner or operator of a hazardous waste storage facility possessed a permit, or had RCRA interim status, pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations promulgated thereunder.

19. To obtain a RCRA permit, an owner or operator of a hazardous waste storage facility, must file, with EPA, a timely Notification of Hazardous Waste Activity, pursuant to Section 3010 (a) of RCRA, 42 U.S.C. § 6930(a) and a timely Part A and a Part B hazardous waste permit application pursuant to Section 3005 of RCRA, 42 U.S.C. § 6925 and 40 C.F.R. 264/10 C.S.R. 25-7.264 and 40 C.F.R. 270 and 260.395.7 RSMo.

20. To achieve RCRA interim status, an owner or operator of a hazardous waste storage facility must file, with EPA, a timely Notification of Hazardous Waste Activity, pursuant to Section 3010 (a) of RCRA, 42 U.S.C. § 6930(a), and a timely Part A hazardous waste permit application, pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e) and 40 C.F.R. Part 270 and 260.395.7 RSMo.

21. The Respondent generated D027 hazardous waste in excess of 1000 kilograms within a calendar month and subsequently stored the hazardous waste for longer than 90 days in violation of 40 C.F.R. 262.34/10 C.S.R. 25-5.262(2)(C)(1) and

(2), 40 C.F.R. 264 and 265/10 C.S.R. 25-7.264 and 7.265 and the permit requirements of 40 C.F.R. 270 and 260.395.7 RSMo.

22. Additionally, Respondent neither filed, with EPA, a timely Notification of Hazardous Waste Activity nor a Part A or Part B hazardous waste permit application for a hazardous waste storage facility. Therefore, Respondent neither obtained a RCRA permit nor achieved RCRA interim status to operate a hazardous waste storage facility.

23. Respondent's operation of a hazardous waste storage facility without obtaining RCRA interim status and/or without a RCRA permit is a violation of Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), 40 C.F. R. 264 and 265/10 C.S.R. 25-7.264 and 7.265, and 40 C.F.R. Part 270 and 260.395.7 RSMo.

24. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928, and based upon the allegations contained above, Complainant proposes that a civil penalty of \$66,045.00 (RCRA Civil Penalty Policy matrix value of \$ 5,500.00 for the gravity of the violation, \$ 49,225.00 for the multi-day portion of the violation, 20% increase in penalty for negligence, and an economic benefit of \$ 375.00) be assessed against Respondent for violating 40 C.F.R. 262.34(a) and (b)/10 C.S.R. 25-5.262 and Section 3005 of RCRA, 42 U.S.C. § 6925, 40 C.F.R. 270 and 260.395.7 RSMo, as discussed above.

C. COMPLIANCE ORDER

25. IT IS HEREBY ORDERED that within thirty (30) days of receipt of this Order, Respondent shall pay a penalty of \$ 86,511.00. Payment shall be made by certified or cashier's check payable to "Treasurer of the United States" and remitted to the Regional Hearing Clerk, United States Environmental Protection Agency, Region

VII, P.O. Box 360748M, Pittsburgh, Pennsylvania 15251. A copy of said check shall be sent simultaneously by certified mail, return receipt requested, to Mr. Brian Mitchell, Environmental Engineer, ARTD/RESP, U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. The check must reference the EPA Docket Number of this Complaint and Compliance Order and Respondent by name.

26. IT IS FURTHER ORDERED that Respondent take the following actions within the periods specified:

- (a) Within 10 days of receipt of this Order, Respondent shall notify the Missouri Department of Natural Resources of RCRA activities at the Facility as required by Section 3010 of RCRA, 42 U.S.C. § 6930. EPA shall be copied on the notification.
- (b) Within forty-five (45) calendar days of the effective date of this Order, submit to EPA and the Missouri Department of Natural Resources a sampling plan for the hazardous waste storage area (D027 hazardous waste storage area). The sampling plan shall be designed to determine the extent, if any, of hazardous waste releases from the illegal hazard waste storage area. The sampling plan, inclusive of any Missouri Department of Natural Resources modifications and upon final approval by the Missouri Department of Natural Resources, shall be fully incorporated herein as an enforceable part of this Compliance Order. Respondent shall fully implement the sampling plan in accordance with the schedule

contained therein.

(c) Respondent shall submit all documents required to be submitted pursuant to this Order, unless otherwise specified herein, to: Mr. Brian Mitchell, Environmental Engineer, ARTD/RESP, U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and to Ms. Kathy Flippin, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102.

D. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

27. In accordance with Section 3008(b) of RCRA, 42 U.S.C. § 6928(b) the Compliance Order shall become final unless Respondent files an answer and requests a public hearing in writing no later than thirty (30) days after service of the Complaint, Compliance Order, and Notice of Opportunity for Hearing.

28. A written answer to the Complaint and Compliance Order and the request for hearing must satisfy the requirements of 40 C.F.R. Section 22.15 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, a copy of which is attached hereto. The answer and request for hearing must be filed with the Regional Hearing Clerk, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the answer and request for hearing and copies of any subsequent documents filed in this action should be sent to Phillip S. Page, Office of Regional Counsel, at the same address.

29. Respondent's failure to file a written answer and request a hearing within thirty (30) days of service of this Complaint, Compliance Order, and Notice of Opportunity for Hearing will constitute a binding admission of all allegations contained in the Complaint and a waiver of Respondent's right to a hearing. A Default Order may thereafter be issued by the Regional Judicial Officer, and the civil penalty proposed herein shall become due and payable without further proceedings.

30. The proposed penalty as set forth in the Complaint was developed based on the best available information at the time of issuance of this Complaint, Compliance Order and Notice for Opportunity for Hearing, and may be adjusted if the Respondent establishes bona fide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

E. SETTLEMENT CONFERENCE

31. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case in an attempt to arrive at settlement. To request a settlement conference, please contact Phillip S. Page, Office of Regional Counsel, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 551-7580.

32. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted. The informal conference procedure may be pursued simultaneously with the adjudicatory hearing procedure.

33. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement as a result of informal conference. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Consent Order which may be issued by the Regional Judicial Officer, EPA Region VII.

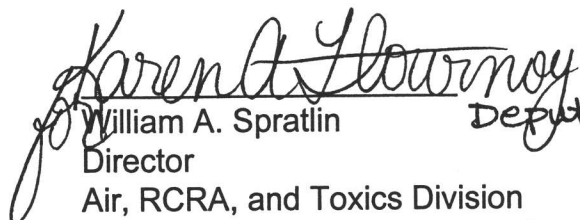
34. If Respondent has neither filed an Answer nor requested a hearing within the thirty (30) day time period allowed by the Complaint, Compliance Order, and Notice of Opportunity for Hearing, the penalties will be assessed without further proceedings and Respondent will be notified that the penalties have become due and payable.


F. EFFECTIVE DATE

35. This Complaint, Compliance Order, and Notice of Opportunity for Hearing, EPA Docket No. VII-97-H-0017, shall become effective on the date signed by the Director, Air, RCRA and Toxics Division, EPA Region VII.

IT IS SO ISSUED AND ORDERED:

9-25-98
Date


William A. Spratlin
Director
Air, RCRA, and Toxics Division
U.S. Environmental Protection Agency
Region VII


Deputy Director

In the Matter of

Willert Home Products
RCRA Docket No. VII-98-0017

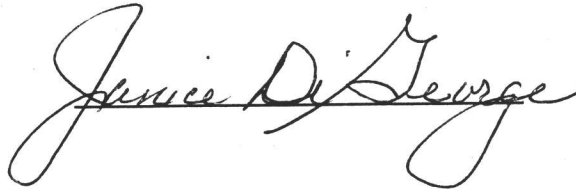
9.28-98
Date

Phillip S. Page
Phillip S. Page
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

Attachment

CERTIFICATE OF SERVICE

I hereby certify that the original and one true and correct copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing was hand delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; and a true and correct copy together with a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits and a copy of the RCRA Civil Penalty Policy, dated October 1990, were sent by certified mail, return receipt requested, to Susan M. Hantack, Registered Agent For Service For Willert Home Products, 4044 Park Avenue, St. Louis, Missouri 63110 on this 29th day of September, 1998.



SEP 30 1998

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

726 MINNESOTA AVENUE

KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

98 SEP 29 PM 1:46

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

RESP

IN THE MATTER OF) EPCRA Docket No. VII-97E-377
)
Willert Home Products, Inc.) COMPLAINT AND NOTICE OF
St. Louis, Missouri) OPPORTUNITY FOR HEARING
)
Respondent)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), as amended, 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act (hereinafter "EPCRA"), 42 U.S.C. § 11045.

2. This Complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondent has violated Section 103 of CERCLA, 42 U.S.C. § 9603, and the regulations promulgated pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602, and codified at 40 C.F.R. Part 302; and Section 304 of EPCRA, 42 U.S.C. § 11004, and the regulations promulgated pursuant to Section 328 of EPCRA, 42 U.S.C. § 11048, and codified at 40 C.F.R. Part 355.

Parties

3. The Complainant, by delegation from the Administrator of EPA, and the Regional Administrator, EPA, Region VII, is the Director, Air, RCRA, and Toxics Division, EPA, Region VII.

4. The Respondent is Willert Home Products, Inc. (Willert), 4044 Park Avenue, St. Louis, Missouri, 63110, maker of home products including moth preventives and air fresheners, incorporated in the State of Missouri in 1957, and registered to do business in the State of Missouri.

Statutory and Regulatory Framework

5. Section 103(a) of CERCLA and the regulation set forth at 40 C.F.R. § 302.6 require any person in charge of a vessel or an onshore or offshore facility, as soon as he has knowledge of any release (other than a federally permitted release) of a hazardous substance from such vessel or facility in quantities equal to or

greater than the reportable quantity established pursuant to Section 102 of CERCLA, to immediately notify the National Response Center of such release.

6. Section 304(a) of EPCRA and the regulation set forth at 40 C.F.R. § 355.40 require the owner or operator of a facility at which a hazardous chemical is produced, used, or stored and at which there is a release of a reportable quantity of any EPCRA extremely hazardous substance or CERCLA hazardous substance to immediately notify the State Emergency Response Commission of any State likely to be affected by the release and the emergency coordinator for the Local Emergency Planning Committees for any area likely to be affected by the release.

Violations

COUNT I

7. Respondent is a person as defined by Section 101(21) of CERCLA and Section 329(7) of EPCRA.

8. At all times relevant hereto, Respondent owned or operated and was in charge of Willert Home Products, Inc. located at 4044 Park Avenue, St. Louis, Missouri (hereinafter "Respondent's facility").

9. Respondent's facility is a facility as defined by Section 101(9) of CERCLA and Section 329(4) of EPCRA.

10. 1,4- Dichlorobenzene is a hazardous substance as defined by Section 101(14) of CERCLA, with a reportable quantity of 100 pounds, as designated by 40 C.F.R. § 302.4.

11. On October 10, 1996, from approximately 9:00 p.m. to approximately 9:10 p.m., there was a release of 1,4-dichlorobenzene from Respondent's facility in excess of the reportable quantity designated by 40 C.F.R. § 302.4.

12. Respondent discovered the release referenced in paragraph 11 at approximately 9:00 p.m. on October 10, 1996.

13. Respondent did not immediately notify the National Response Center of the release as soon as it had knowledge of the release.

14. Respondent's failure to notify the National Response Center of the release as soon as it had knowledge of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. 9603, and of the requirements of 40 C.F.R. § 302(6).

15. Pursuant to Section 109 of CERCLA, 42 U.S.C. 9609, and based upon the facts set forth in paragraphs 7 through 14 above, it is proposed that a civil penalty of \$25,000 be assessed against Respondent.

COUNT II

16. The facts stated in paragraphs 7 through 12 above are referenced and incorporated as if fully restated herein.

17. At all times relevant hereto, hazardous chemicals as defined by Section 329(5) of EPCRA, 42 U.S.C. 11049 and Section 321(e), 42 U.S.C. 11021, were produced, used, or stored by Respondent's facility.

18. 1,4-Dichlorobenzene is a hazardous substance, as defined by Sections 302(a) and 329(3) of EPCRA, 42 U.S.C. 1102(a) and 11049(3), respectively, and as designated by 40 C.F.R. Part 355, Appendix A.

19. The release referenced in paragraph 11 above was one which required notice pursuant to Section 103(a) of CERCLA.

20. Respondent did not immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release.

21. Respondent's failure to immediately notify the State Emergency Response Commission or the Local Emergency Planning Committee of the release is a violation of Section 304(b) of EPCRA, 42 U.S.C. 11004(b) and of the requirements of 40 C.F.R. § 355.40.

22. Pursuant to Section 325(b)(2) of EPCRA, and based upon the facts set forth in paragraphs 16 through 21 above, it is hereby proposed that a civil penalty of \$25,000 be assessed against Respondent.

Relief

23. Section 109(b)(1) of CERCLA authorizes a civil penalty of not more than \$25,000 per day for each day during which a violation continues for any violation of the requirements of Section 103(a) of CERCLA. Under the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Parts 19 and 27, penalties of up to \$27,500 per day for each day a violation continues may be assessed for violations of CERCLA Section 103 and EPCRA Section 304 that occur after January 30, 1997. The penalties proposed in paragraphs 15 and 22 above are based upon the facts stated in this Complaint, and on the nature, circumstances, extent, and

gravity of the above-cited violations, and with respect to the Respondent, ability to pay, any prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require in accordance with CERCLA and the Interim Final Enforcement Response Policy for Sections 304, 311 and 312 of EPCRA and Section 103 of CERCLA. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

24. Section 325(b)(2) of EPCRA, 42 U.S.C. 11045 authorizes a civil penalty for violations of the requirements of Section 304 of EPCRA of not more than \$25,000 per day for each day during which the violation continues. Under the Civil Monetary Penalties Inflation Rule, 40 C.F.R. Parts 19 and 27, penalties of up to \$27,500 per day for each day a violation continues may be assessed for violations of CERCLA Section 103 and EPCRA Section 304 that occur after January 30, 1997. The penalties proposed in paragraphs 15 and 22 above are based upon the facts stated in this Complaint, and on the nature, circumstances, extent, and gravity of the above-cited violations, and with respect to the Respondent, ability to pay, effect on ability to continue to do business, any history of prior such violations, degree of culpability, and such other matters as justice may require in accordance with EPCRA and the Interim Final Enforcement Response Policy for Sections 304, 311 and 312 of EPCRA and Section 103 of CERCLA. This policy provides a rational, consistent and equitable calculation methodology for applying the statutory penalty factors enumerated above to particular cases.

25. The proposed penalties as set forth in this Complaint are based on the best information available to EPA at the time that the Complaint was issued. The penalty may be adjusted if the Respondent establishes bonafide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

26. A Summary of the Proposed Penalties are contained in the enclosed Penalty Calculation Summary attached hereto and incorporated herein by reference.

27. If Respondent does not contest the findings and assessments set forth above, payment of the penalties assessed herein may be remitted as follows:

- Payment of the penalty for Count I - \$25,000 - may be made by certified or cashier's check payable to "EPA Hazardous Substance Superfund" and remitted to:

EPA - Region VII
Attn: Superfund Accounting
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

- Payment of the penalty for Count II - \$25,000 - may be made by certified or cashier's check payable to "Treasurer, United States of America" and remitted to:

EPA - Region VII
Attn: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

Checks should reference the name and docket number of the Complaint.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

28. Respondent may request a hearing to contest any material fact contained in the Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, a copy of which is enclosed herewith.

29. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondent must file a written answer and request for hearing within twenty (20) days of service of this Complaint and Notice of Opportunity for Hearing. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent intends to place at issue; and (c) whether a hearing is requested.

30. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for hearing.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations. Said answer shall be filed with the following:

Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

31. If Respondent fails to file a written answer and request for a hearing within twenty (20) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all allegations made in the Complaint and a waiver of Respondent's right to a hearing under CERCLA and EPCRA. A Default Order may thereafter be issued by the Regional Administrator and the civil penalties proposed herein shall become due and payable without further proceedings.

Informal Settlement Conference

32. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

Phillip S. Page
Assistant Regional Counsel
United States Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101
Telephone 913/551-7580

33. Please note that a request for an informal settlement conference does not extend the twenty (20) day period during which a written answer and request for a hearing must be submitted.

34. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of informal conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Consent Order issued by the Regional Judicial Officer, EPA Region VII. The issuance of such a Consent Agreement and Consent Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

35. If Respondent has neither achieved a settlement by informal conference nor filed an answer within the twenty (20) day time period allowed by this Notice, the penalties proposed above may be assessed by the entry of a Default Order.

Date

9-28-98

Karen A. Hounoy
William A. Spratlin
Director

Air, RCRA, and Toxics Division

Phillip S. Page

Phillip S. Page
Assistant Regional Counsel

Enclosures: Penalty Calculation Summary
Consolidated Rules of Practice Governing the
Administrative Assessment of Civil Penalties
and the Revocation or Suspension of Permits,
40 C.F.R. Part 22
Interim Final Enforcement Response Policy For
Sections 304, 311 and 312 Of EPCRA and Section 103
Of CERCLA

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Complaint and Notice of Opportunity for Hearing; a copy of the Penalty Calculation Summary; a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22; and a copy of the January 8, 1998, Interim Final Enforcement Response Policy for Sections 304, 311 and 312 of EPCRA and Section 103 of CERCLA; to the following registered agent for Willert Home Products, Inc.:

Susan M. Hantak
4044 Park Avenue
St. Louis, Missouri 63110

September 29, 1998
Date

Cynthia Sehnert-Jones
Cynthia Sehnert-Jones

PENALTY CALCULATION FOR
Willert Home Products, Inc.
St. Louis, Missouri
EPCRA Docket No. VII-97E-377

COUNT I

VIOLATION: Failure to immediately notify National Response Center (NRC) of October 10, 1996, 1,4-dichlorobenzene release; in violation of 40 C.F.R. § 302.6

EXTENT: LEVEL 1 - Description: Failed to notify NRC immediately; greater than two hours of 1,4-dichlorobenzene release

GRAVITY: LEVEL A - Description: Release was greater than 10 times the reportable quantity for 1,4-dichlorobenzene release

GRAVITY BASED

PENALTY: \$25,000 + other adjustments: None

PROPOSED

PENALTY: \$25,000

COUNT II

VIOLATION: Failure to immediately notify the Local Emergency Planning Committee (LEPC) and State Emergency Response Commission (SERC) of a October 10, 1996 1,4-dichlorobenzene release; in violation of § 355.40

EXTENT: LEVEL 1 - Description: Failed to notify LEPC/SERC immediately; greater than 2 hours after 1,4-dichlorobenzene release

GRAVITY: LEVEL A - Description: Release was greater than 10 times the reportable quantity for 1,4-dichlorobenzene

GRAVITY BASED

PENALTY: \$25,000 + other adjustments: None

PROPOSED

PENALTY: \$25,000

TOTAL PROPOSED PENALTY: \$50,000

ENFORCEMENT SENSITIVE
PENALTY COMPUTATION WORKSHEET
COUNT I

Company Name: Willert Home Products
St. Louis, Missouri
RCRA ID # MOD006289680

Requirements Violated: 40 C.F.R. 262.11/10 C.S.R. 25-5.262

Failure to conduct an adequate hazardous
waste determination

1. Gravity based penalty from the matrix: \$ 550.00
 - (a) Potential for Harm: Minor
 - (b) Extent of Deviation: Moderate
2. Multi-day Component: \$ 16,500.00
3. Addition of line 1 and line 2: \$ 17,050.00
4. Percent decrease for good faith: 0 %
5. Percent increase for willfulness/negligence: 20 %
6. Percent increase for history of non-compliance: 0 %
7. Percent decrease for unique factors: 0 %
8. Total lines 4 through 7: 20 %
9. Multiply line 3 by line 8: \$ 2,410.00
10. Calculated Economic Benefit: \$ 6.00
11. Addition of lines 3, 9, and 10 = \$ 20,466.00

1. Gravity Based Penalty:

(a) Potential For Harm To Human Health And The Environment, And The RCRA Program: There was a minor potential for harm to human health and the environment as discussed below. However, there was moderate harm done to the RCRA program as discussed below. Because Respondent had made some effort to characterize the spent charcoal waste and since the drums contents were labeled on the drums, the minor potential for harm category was deemed appropriate.

EPA inspected Respondent's facility on October 28 and 29, 1997. The EPA representative found 50 55-gallon drums [approximately 12,500 pounds of waste] at the facility that were labeled "Charcoal w/Para Non-Hazardous Waste". According to Respondent those drums contained spent charcoal, contaminated with p-dichlorobenzene, that was removed from the two p-dichlorobenzene air strippers. According to Respondent, this was the first time the charcoal had been removed from the air strippers. According to Respondent, such waste was generated in May 1997. Respondent presented the EPA inspector with a copy of an analysis that showed that the such waste was comprised of 35.7% p-dichlorobenzene. The EPA inspector asked if a TCLP test had been conducted on such waste. Respondent indicated that a TCLP test had not been conducted on such waste. The spent charcoal waste was tested using TCLP procedures. In correspondence dated November 7, 1997, Respondent indicated that the spent charcoal waste tested hazardous. Test results showed a leachable p-dichlorobenzene level of 9.4 mg/l while the regulatory limit for leachable p-dichlorobenzene is 7.5 mg/l.

At the time of the inspection, Respondent had not conducted an adequate hazardous waste determination on the spent charcoal waste, a violation of 40 C.F.R. 262.11/10 C.S.R. 25-5.262.

The drums of spent charcoal waste were in good condition.

The drums of spent charcoal waste were stored indoors.

The facility is located in a semi-industrial area in St. Louis, Missouri.

Respondent had conducted some analyses on the spent charcoal waste, however, Respondent failed to fully make a hazardous waste determination for this waste stream.

The violation posed a relatively low risk of exposure.

The regulation discussed above is a fundamental element to a RCRA Program as this is the point at which a waste is determined to be subject to regulation as a hazardous waste or not. Respondent failed to comply with this regulatory requirement. The RCRA Program was designed to be self implementing standards. EPA and MDNR is not staffed so that it can assess every facility's compliance with RCRA. Such noncompliance created a significant adverse effect for implementing an effective RCRA program in the state of Missouri.

(b) Extent of Deviation From The Requirements: A moderate extent of deviation was selected in this case for the following reasons.

At the time of the inspection, Respondent had not conducted an adequate hazardous waste determination on the spent charcoal [50 55-gallons of D027 hazardous waste or approximately 12,500 pounds of D027 hazardous waste].

Respondent had properly characterized and was properly managing all other hazardous wastes generated at the facility in compliance with RCRA, with the exception of this one waste.

Respondent had conducted some analyses on the spent charcoal waste, however, Respondent failed to fully make a hazardous waste determination for this waste stream.

Such significant noncompliance by Respondent constitutes a moderate extent of deviation from the regulation.

Note: [The low end of the penalty matrix was selected because (1) the waste was not highly toxic, (2) the violations did not result in human beings or the environment being exposed to hazardous waste, and (3) the aforementioned violations appear to be an isolated incident.]

2. According to the 1990 RCRA Civil Penalty Policy, multi-day penalties are discretionary for days 2-180 and 181+. A multi-day penalty component for days 2-151 is being assessed because the multi-day penalty component amount would deter future non-compliance and the penalty amount was deemed appropriate given the facts surrounding this case.

Note: [The low end of the penalty matrix was selected because (1) the waste was not highly toxic, (2) the violations did not result in human beings or the environment being exposed to hazardous waste, and (3) the aforementioned violations appear to be an isolated incident.]

Waste was generated at the end of May 1997 [June 1, 1997 is day 1]. Respondent took steps to correct the violation the day of the inspection [October 29, 1997 is day 151].

$$(\$110.00) * (\text{days } 2-151) = \$16,500.00$$

5. A 20% increase in penalty, for negligence was assessed because Respondent had data which pointed to the waste being hazardous and it failed to fully determine if the waste was hazardous waste.
10. It costed Respondent approximately \$150.00 to have a hazardous waste analysis conducted on the spent charcoal waste. Assuming an 8% rate of return and using a simple interest calculation formula, the economic benefit gained by not properly conducting a hazardous waste determination in May 1997 would be the amount gained from delaying the expenditures for compliance, which would be approximately \$6.00, as shown below.

$$\$150(.08)(6/12 \text{ of a year}) = \$6.00$$

ENFORCEMENT SENSITIVE
PENALTY COMPUTATION WORKSHEET
COUNT II

Company Name: Willert Home Products
St. Louis, Missouri
RCRA ID # MOD006289680

Requirements Violated: Section 3005 of RCRA/40 C.F.R. 262.34(a)
and (b)/40 C.F.R. 262.34(a)(2) and
(3)/10 C.S.R. 25-5.262

Failure to date and label and storage
greater than 90 days without a RCRA
Permit or RCRA Interim Status

1. Gravity based penalty from the matrix: \$ 5,500.00
 - (a) Potential for Harm: Moderate
 - (b) Extent of Deviation: Moderate
2. Multi-day Component: \$ 49,225.00
3. Addition of line 1 and line 2: \$ 54,725.00
4. Percent decrease for good faith: 0 %
5. Percent increase for willfulness/negligence: 20 %
6. Percent increase for history of non-compliance: 0 %
7. Percent decrease for unique factors: 0 %
8. Total lines 4 through 7: 20 %
9. Multiply line 3 by line 8: \$ 10,945.00
10. Calculated Economic Benefit: \$ 375.00
11. Addition of lines 3, 9, and 10 = \$ 66,045.00

1. Gravity Based Penalty:

(a) Potential For Harm To Human Health And The Environment, And The RCRA Program: There was a minor potential for harm to human health and the environment as discussed below. However, there was major harm done to the RCRA program as discussed below. Therefore, the moderate potential for harm category was selected.

EPA inspected Respondent's facility on October 28 and 29, 1997. The EPA representative found 50 55-gallon drums [approximately 12,500 pounds of waste] at the facility that were labeled "Charcoal w/Para Non-Hazardous Waste". According to Respondent those drums contained spent charcoal, contaminated with p-dichlorobenzene, that was removed from the two p-dichlorobenzene air strippers. According to Respondent, this was the first time the charcoal had been removed from the sir strippers. According to Respondent, such waste was generated in May 1997. Respondent presented the EPA inspector with a copy of an analysis that showed that the such waste was comprised of 35.7% p-dichlorobenzene. The EPA inspector asked if a TCLP test had been conducted on such waste. Respondent indicated that a TCLP test had not been conducted on such waste. The spent charcoal waste was tested using TCLP procedures. In correspondence dated November 7, 1997, Respondent indicated that the spent charcoal waste tested hazardous. Test results showed a leachable p-dichlorobenzene level of 9.4 mg/l while the regulatory limit for leachable p-dichlorobenzene is 7.5 mg/l. Respondent subsequently conducted a pilot test on one drum of the spent charcoal waste in order to determine if the waste could be rendered non-hazardous via treatment on-site. In correspondence dated December 3, 1997, Respondent indicated that the spent charcoal waste could be treated on-site and rendered non-hazardous. In correspondence dated May 29, 1998, Respondent indicated that on-site treatment of the spent charcoal waste would not be cost effective. Thus, Respondent disposed of the spent charcoal waste as hazardous waste on May 28, 1998.

Respondent had not properly labeled the spent charcoal waste with the words "Hazardous Waste nor had Respondent dated the drums of spent charcoal, a violation of 40 C.F.R. 262.34(a)(2) and (3)/10 C.S.R. 25-5.262.

The drums of spent charcoal waste were in good condition.

The drums of spent charcoal waste were stored indoors.

The facility is located in a semi-industrial area in St. Louis, Missouri.

The violation posed a relatively low risk of exposure.

Respondent stored 50 55-gallon drums of spent charcoal, contaminated with p-dichlorobenzene, that was removed from the two p-dichlorobenzene air strippers [approximately 12,500 pounds of D027 hazardous waste] at its facility for approximately 4 times longer than generators are allowed to store hazardous waste on-site. Respondent stored such waste for approximately 360 days and similar generators of hazardous waste are allowed only 90 days to store such hazardous waste on-site. Respondent did not notify EPA or MDNR, or obtain RCRA interim status or a RCRA permit its hazardous waste storage activities. Thus, Respondent violated 40 C.F.R. 262.34/Section 3005 of RCRA/10 C.S.R. 25-5.262, both regulatory and statutory requirements.

Respondent failed to comply with these statutory and regulatory requirements, which are fundamental elements to a RCRA Program. The RCRA Program was designed to be self implementing standards. EPA and MDNR is not staffed so that it can assess every facility's compliance with RCRA. Such noncompliance created a substantial adverse effect for implementing an effective RCRA program in the state of Missouri.

(b) Extent of Deviation From The Requirements: A moderate extent of deviation was selected in this case for the following reasons.

Respondent stored 50 55-gallon drums of spent charcoal that was removed from the two p-dichlorobenzene air strippers [approximately 12,500 pounds of D027 hazardous waste] at its facility for approximately 4 times longer than generators are allowed to store hazardous waste on-site. Respondent stored such waste for approximately 360 days and similar generators of hazardous waste are allowed only 90 days to store such hazardous waste on-site. Respondent did not notify EPA or MDNR, or obtain RCRA interim status or a RCRA permit from for its hazardous waste storage activities.

Respondent was properly managing [labeling, dating, and shipping hazardous waste off-site within 90 days] all hazardous wastes generated at its facility in compliance with RCRA, with this one exception.

Such significant noncompliance by Respondent constitutes a moderate extent of deviation from the regulations.

Such significant noncompliance by Respondent constitutes a moderate extent of deviation from the statute and regulations.

Note: [The low end of the penalty matrix was selected because (1) the waste was not highly toxic, (2) the violations did not result in human beings or the environment being exposed to hazardous waste, and (3) the aforementioned violations appear to be an isolated incident.]

2. According to the 1990 RCRA Civil Penalty Policy, multi-day penalties are presumed for days 2-180. According to the 1990 RCRA Civil Penalty Policy, multi-day penalties are discretionary for days 181+. A multi-day penalty component for days 2-180 is being assessed because the multi-day penalty component amount would deter future non-compliance and the penalty amount was deemed appropriate given the facts surrounding this case.

Note: [The low end of the penalty matrix was selected because (1) the waste was not highly toxic, (2) the violations did not result in human beings or the environment being exposed to hazardous waste, and (3) the aforementioned violations appear to be an isolated incident.]

$$(\$275.00) * (\text{days } 2-180) = \$49,225.00$$

5. A 20% increase in penalty, for negligence was assessed because Respondent had data which pointed to the waste being hazardous and it failed to act on such data appropriately as discussed above.

10. I spoke with Laura Gray with ERD-MO, Inc. She told me that they charged \$125.00 per drum for disposal of the D027 hazardous waste. Assuming an 8% rate of return and using a simple interest calculation formula, the economic benefit gained by not disposing of the spent charcoal waste would be the amount gained from delaying the expenditures for compliance, which would be approximately \$375.00.

$$\$125(50 \text{ drums})(.08)(3/4 \text{ of a year}) = \$375.00$$

It would have taken an estimated 30 min to obtain hazardous waste labels and to label and date the 50 55-gallon drums of spent charcoal wastes. Assuming an 8% rate of return, an hourly wage rate of \$20.00, and using a simple interest calculation formula, the economic benefit gained by not properly labeling and dating the spent charcoal waste would be the amount gained from delaying the expenditures for compliance, which would be approximately

$$\$20(.08)(.5 \text{ hrs})(5/12 \text{ of a year}) = \$.33$$